

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Robert G. Taub

Ferguson Post Office
Ferguson, Iowa

Docket No. A2012-28

ORDER AFFIRMING DETERMINATION

(Issued February 10, 2012)

I. INTRODUCTION

On December 15, 2011, the Postal Service advised the Commission that it “will delay the closing or consolidation of any Post Office until May 15, 2012.”¹ The Postal Service further indicated that it “will proceed with the discontinuance process for any Post Office in which a Final Determination was already posted as of December 12, 2011, including all pending appeals.” *Id.* It stated that the only “Post Offices” subject to closing prior to May 16, 2012 are those that were not in operation on, and for which a Final Determination was posted as of, December 12, 2011. *Id.* It affirmed that it “will not close or consolidate any other Post Office prior to May 16, 2012.” *Id.* at 2. Lastly,

¹ United States Postal Service Notice of Status of the Moratorium on Post Office Discontinuance Actions, December 15, 2011, at 1 (Notice).

the Postal Service requested the Commission “to continue adjudicating appeals as provided in the 120-day decisional schedule for each proceeding.” *Id.*

The Postal Service’s Notice outlines the parameters of its newly announced discontinuance policy. Pursuant to the Postal Service’s request, the Commission will fulfill its appellate responsibilities under 39 U.S.C. § 404(d)(5).

On October 20, 2011, Dale Thompson, Mayor, and Members of the Ferguson City Council (Petitioners) filed a petition with the Commission seeking review of the Postal Service’s Final Determination to close the Ferguson, Iowa post office (Ferguson post office).² The Final Determination to close the Ferguson post office is affirmed.³

II. PROCEDURAL HISTORY

On October 27, 2011, the Commission established Docket No. A2012 -28 to consider the appeal, designated a Public Representative, and directed the Postal Service to file its Administrative Record and any responsive pleadings.⁴

On November 4, 2011, the Postal Service filed the Administrative Record with the Commission.⁵ The Postal Service also filed comments requesting that the Commission affirm its Final Determination.⁶

² Petition for Review received from Dale Thompson, Mayor, and Members of the Ferguson City Council regarding the Ferguson, Iowa post office 50078, October 20, 2011 (Petition). Attached to the Petition is a list that includes approximately 46 signatures of Ferguson postal customers opposed to the post office closure.

³ The Commission is divided equally, 2-2, on the outcome of this appeal. In the absence of a majority, the Final Determination stands.

⁴ Order No.933, Notice and Order Accepting Appeal and Establishing Procedural Schedule, October 27, 2011.

⁵ The Administrative Record is attached to the United States Postal Service Notice of Filing, November 4, 2011 (Administrative Record). The Administrative Record includes, as Item No. 47, the Final Determination to Close the Ferguson, IA Post Office and Establish Service by Rural Route Service (Final Determination).

⁶ United States Postal Service Comments Regarding Appeal, December 15, 2011 (Postal Service Comments). The Postal Service subsequently filed a Notice of the United States Postal Service of Filing Errata, January 10, 2012. In its January 10, 2012 filing, the Postal Service noted four minor corrections to its initial brief. Those corrections are accepted.

Petitioners filed a participant statement supporting their Petition.⁷ On December 30, 2011, the Public Representative filed reply comments.⁸

III. BACKGROUND

The Ferguson post office provides retail postal services and service to 66 post office box customers. Final Determination at 2. No delivery customers are served through this post office. The Ferguson post office, an EAS-11 level facility, provides retail service from 8:00 a.m. to 12:00 p.m. and 12:30 p.m. to 4:00 p.m., Monday through Friday, and 8:00 a.m. to 9:45 a.m. on Saturday. Lobby access hours are 6:00 a.m. to 8:00 p.m., Monday through Saturday. *Id.*

The postmaster position became vacant on October 1, 2010, when the Ferguson postmaster retired. A non-career officer-in-charge (OIC) was installed to operate the post office. Retail transactions average 96 transactions daily (112 minutes of retail workload).⁹ Post office receipts for the last 3 years were \$10,992 in FY 2008; \$11,425 in FY 2009; and \$11,359 in FY 2010. There are no permit or postage meter customers.¹⁰ *Id.* By closing this post office, the Postal Service anticipates savings of \$42,209 annually. *Id.* at 7.

⁷ Participant Statement received from Dale Thompson, Mayor and Members of the Ferguson City Council, November 28, 2011 (Participant Statement).

⁸ Public Representative Comments, December 30, 2011 (PR Comments).

⁹ Petitioners challenge the window counts as unfairly low. They allege that the Postal Service manipulated the results by making the counts during a period of reduced activity. Petition at 2. The Postal Service states that it responded to those customer concerns by conducting a separate survey, which tracked an even lower number of transactions. Postal Service Comments at 2, n.3. The Postal Service admits that any survey will provide only a snapshot view of transaction activity, but notes that window counts are only one factor considered in making the discontinuance determination.

¹⁰ The Final Determination indicates the Ferguson post office has no meter customers or permit mailers, Final Determination at 2. Petitioners assert that there is in fact one permit holder using the post office. Petition at 2. The Postal Service responds by noting that the permit holder's business address is Marshalltown and it can be served by that post office going forward. Postal Service Comments at 3, n.4.

After the closure, retail services will be provided by the Marshalltown post office located approximately 10 miles away.¹¹ *Id.* at 2. Delivery service will be provided by rural carrier through the Marshalltown post office. The Marshalltown post office is an EAS-21 level post office, with retail hours of 9:00 a.m. to 12:00 p.m. and 1:00 p.m. to 5:00 p.m., Monday through Friday, and 9:00 a.m. to 11:00 a.m. on Saturday. Four-hundred (400) post office boxes are available. *Id.* The Postal Service will continue to use the Ferguson name and ZIP Code. *Id.* at 6, Response to Concern No. 32.

IV. PARTICIPANT PLEADINGS

Petitioners. Petitioners oppose the closure of the Ferguson post office. Petitioners challenge the adequacy of the 30-day period for filing an appeal of the Postal Service's determination. Petition at 2. In addition, Petitioners suggest that continued operation of the Ferguson post office is necessary because it is one of three posting places established by ordinance for the City of Ferguson. Petitioners argue further that the Postal Service has failed to consider whether it would continue to provide a maximum degree of effective and regular postal services to the Ferguson community, a rural area where the post office is not self-sustaining. Finally, Petitioners contend that the estimated cost savings from the closing are inaccurate. *Id.*

Postal Service. The Postal Service argues that the Commission should affirm its determination to close the Ferguson post office. Postal Service Comments at 2. The Postal Service believes the appeal raises three main issues: (1) the effect on postal services; (2) the impact on the Ferguson community; and (3) the economic savings expected to result from discontinuing the Ferguson post office. *Id.* at 1. The Postal Service asserts that it has given these and other statutory issues serious consideration

¹¹ MapQuest estimates the driving distance between the Ferguson and Marshalltown post offices to be approximately 10.9 miles (18 minutes driving time). The Postal Service notes that retail services are also available at the Gilman post office, an EAS-13 level facility with the same retail hours as Marshalltown, located 9 miles away. Final Determination at 2.

and concludes that the determination to discontinue the Ferguson post office should be affirmed. *Id.* at 15.

The Postal Service explains that its decision to close the Ferguson post office was based on several factors, including:

- the postmaster vacancy;
- a minimal workload and low office revenue;
- a variety of other delivery and retail options (including the convenience of rural delivery and retail service);
- little recent growth in the area;
- minimal impact on the community; and
- expected financial savings.

Id. at 5. The Postal Service contends that it will continue to provide regular and effective postal services to the Ferguson community when the Final Determination is implemented. *Id.* at 15.

The Postal Service also asserts that it has followed all statutorily required procedures and has addressed the concerns raised by Petitioners regarding the effect on postal services, the effect on the Ferguson community, economic savings, and the effect on postal employees. *Id.* at 15.

Public Representative. The Public Representative concludes that the Postal Service has followed applicable procedures, that the decision to close the Ferguson post office is neither arbitrary nor capricious, and that the Postal Service's decision is supported by substantial evidence. PR Comments at 1.

V. COMMISSION ANALYSIS

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires the Commission to review the Postal Service's determination to close or consolidate a post office on the basis of the record

that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds to be (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) without observance of procedure required by law; or (c) unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.

A. Notice to Customers

Section 404(d)(1) requires that, prior to making a determination to close any post office, the Postal Service must provide notice of its intent to close. Notice must be given 60 days before the proposed closure date to ensure that patrons have an opportunity to present their views regarding the closing. The Postal Service may not take any action to close a post office until 60 days after its determination is made available to persons served by that post office. 39 U.S.C. § 404(d)(4). A decision to close a post office may be appealed within 30 days after the determination is made available to persons served by the post office. 39 U.S.C. § 404(d)(5).

The Administrative Record indicates the Postal Service took the following steps in providing notice of its intent to close. On April 14, 2011, the Postal Service distributed questionnaires to customers regarding the possible change in service at the Ferguson post office. Final Determination at 2. A total of 61 questionnaires were distributed to delivery customers. Other questionnaires were made available at the retail counter. A total of 28 questionnaires were returned. On April 28, 2011, the Postal Service held a community meeting at the Ferguson Community Center to address customer concerns. Twenty-nine (29) customers attended. *Id.*

The Postal Service posted the proposal to close the Ferguson post office with an invitation for comments at the Ferguson, Marshalltown, and Gilman post offices from

May 23, 2011 through July 25, 2011. *Id.* The Final Determination was posted at the same three post offices from September 15, 2011 through October 17, 2011.

Administrative Record, Item Nos. 47, 49.

Petitioners challenge the adequacy of the 30-day period for filing an appeal. Petition at 2. The Postal Service responds by arguing that it has complied with the 30-day posting requirements of its regulations and post office discontinuance handbook. Postal Service Comments at 12, n.16. The applicable statutory provisions in 39 U.S.C. § 404(d)(5) establish a deadline for filing an appeal which is 30 days after the Postal Service makes its final determination to close a post office.

The Postal Service has satisfied the notice requirements of 39 U.S.C. § 404(d).

B. Other Statutory Considerations

In making a determination on whether or not to close a post office, the Postal Service must consider the following factors: the effect on the community; the effect on postal employees; whether a maximum degree of effective and regular postal service will be provided; and the economic savings to the Postal Service. 39 U.S.C. § 404(d)(2)(A). The Postal Service must also comply with the provisions of 39 U.S.C. § 101(b), which prohibits closing any small post office solely for operating at a deficit.

Effect on the community. Ferguson, Iowa is an incorporated community located in Marshall County, Iowa. Administrative Record, Item No. 16. The community is administered politically by the Mayor and City Council. Police protection is provided by the Marshall County Sheriff. Fire protection is provided by the Ferguson Volunteer Fire Department. The community is comprised of mostly retirees and those who work in local businesses or commute to work in nearby communities. *Id.* Residents may travel to nearby communities for other supplies and services. *See generally* Administrative Record, Item No. 22 (returned customer questionnaires and Postal Service response letters).

As a general matter, the Postal Service solicits input from the community by distributing questionnaires to customers and holding a community meeting. The Postal

Service met with members of the Ferguson community and solicited input from the community with questionnaires. In response to the Postal Service's proposal to close the Ferguson post office, customers raised concerns regarding the effect of the closure on the community. Their concerns and the Postal Service's responses are summarized in the Final Determination. Final Determination at 4, 6.

Petitioners argue that the use of the bulletin board at the Ferguson post office is an official posting location established by local ordinance of the City of Ferguson and that, contrary to the Postal Service statements, there is no City Hall in the town that could be used as an alternative for public postings. Petition at 2; Participant Statement at 3. The Postal Service contends that photographs taken by the Postal Service as part of the development of the Administrative Record in this matter indicate that Ferguson has other facilities that can be used for this purpose. Postal Service Comments at 11. It also notes that Petitioners have stated that Ferguson contains at least two other posting places established by local ordinance. *Id.* Finally, the Postal Service explains that the community identity will be preserved by continuing the use of the Ferguson name and ZIP Code in addresses. *Id.* at 10.

The Postal Service has adequately considered the effect of the post office closing on the community as required by 39 U.S.C. § 404(d)(2)(A)(i).

Effect on employees. The Postal Service states that the Ferguson postmaster retired on October 1, 2010 and that an OIC has operated the Ferguson post office since then.¹² Final Determination at 2. It asserts that after the Final Determination is implemented, the temporary OIC will either be reassigned or separated and that no other Postal Service employee will be adversely affected. *Id.*

The Postal Service has considered the possible effects of the post office closing on the OIC and has satisfied its obligation to consider the effect of the closing on employees at the Ferguson post office as required by 39 U.S.C. § 404(d)(2)(A)(ii).

¹² Petitioners assert that the OIC has operated the Ferguson post office for 5 years. Petition at 2. In either event, it is clear that an OIC has been operating the Ferguson post office for some time and that it is an OIC who will be affected by the closing of the Ferguson post office.

Effective and regular service. The Postal Service contends that it has considered the effect the closing will have on postal services provided to Ferguson customers. Postal Service Comments at 5. It asserts that customers of the closed Ferguson post office may obtain retail services at the Marshalltown post office located 10 miles away. Final Determination at 2. Delivery service will be provided by rural carrier through the Marshalltown post office. *Id.* The Ferguson post office box customers may obtain Post Office Box service at the Marshalltown post office, which has 400 boxes available. *Id.*

For customers choosing not to travel to the Marshalltown post office, the Postal Service explains that retail services will be available from the carrier. Postal Service Comments at 6. The Postal Service adds that it is not necessary to meet the carrier for service since most transactions do not require meeting the carrier at the mailbox. *Id.* at 9.

Petitioners argue that the rural delivery service will not provide the Ferguson community with a maximum degree of effective and regular services. Petition at 1-2. In particular, they express concerns regarding mail security and the inconveniences in purchasing stamps and money orders and in sending and receiving accountable mail. *Id.* at 1. They further contend that closing the Ferguson post office would place an unfair burden on senior citizens who are unable to travel to the Marshalltown or Gilman post offices for routine postal services. *Id.* at 2.

The Postal Service responds to mail security concerns by stating that customers may place a lock on their mailboxes as a security measure and that there is no record of mail theft or vandalism at the Ferguson post office. Postal Service Comments at 8-9. The Postal Service contends that rural route delivery to mailboxes installed on the carrier's line of travel provides access to retail service that is similar to that in post offices, thereby alleviating the need to travel to the post office for most transactions. *Id.* at 6. The Postal Service argues that the effect of the closing on the shipping of packages and the efficiency and timeliness of rural route service was also considered. *Id.* at 7. It notes that rural carriers can bring accountable mail and packages that require signature to the customer's door for signature. *Id.* at 7. It further responds that

carrier service is beneficial to senior citizens and customers who face special challenges because special provisions can be made for hardship cases or special needs customers. *Id.*

Finally, Petitioners object to the Postal Service's denial of the request for a reduction in the Ferguson post office's hours of operation as an alternative to the proposed closing. Petition at 2. The Postal Service takes the position that the closing of the post office and the establishment of rural route service is the most appropriate solution for providing regular and effective service. Postal Service Comments at 12, n.16; 13.

The Postal Service has considered the issues raised by customers concerning effective and regular service as required by 39 U.S.C. § 404(d)(2)(A)(iii).

Economic savings. The Postal Service estimates total annual savings of \$42,209. Final Determination at 7. It derives this figure by summing the following costs: postmaster salary and benefits (\$44,279) and annual lease costs (\$6,111), minus the cost of replacement service (\$8,181). *Id.*

Petitioners assert that the estimated savings are inaccurate. Petition at 2. Specifically, they assert the Postal Service will not realize the full amount of the estimated cost savings at the Ferguson post office because a career postmaster salary was used in the calculation, in lieu of the lower income earned by the OIC, who has been operating the Ferguson post office for approximately 5 years. *Id.* The Postal Service responds that discontinuing the Ferguson post office would eliminate a permanent career position, thereby allowing the Postal Service to avoid the cost of filling that position in the future. Postal Service Comments at 13.

The Ferguson post office postmaster retired at least 16 months ago and possibly longer. Final Determination at 2. The post office has since been staffed by a non-career OIC who, upon discontinuance of the post office, may be separated from the Postal Service. The postmaster position and the corresponding salary will be eliminated. See, e.g., Docket No. A2011-67, United States Postal Service Comments Regarding Appeal, October 24, 2011, at 13; Docket No. A2011-68, United States Postal

Service Comments Regarding Appeal, November 2, 2011, at 10. Furthermore, notwithstanding that the Ferguson post office has been staffed by an OIC for over a year, even assuming the use of the presumably lower OIC salary, the Postal Service would have satisfied the requirements of section 404(d)(2)(A)(iv).

The Postal Service has satisfied the requirement that it consider economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

Section 101(b). Section 101(b) prohibits closing any small post office solely for operating at a deficit. Petitioners allege that the Postal Service is closing the Ferguson post office solely for economic reasons. Petition at 1.

To be sure, economics plays a role in the Postal Service's decision. However, the Commission is not prepared to conclude that the Postal Service's determination violates section 101(b). In addition to considering workload at the Ferguson post office (revenues declining and averaging only 96 retail transactions per day), the Postal Service took into account other factors such as the postmaster vacancy, the minimal impact on the community, and expected financial savings. In addition, it considered the alternate delivery and retail options available to customers. Final Determination at 2.

The Postal Service did not violate the prohibition in section 101(b) on closing the Ferguson post office solely for operating at a deficit.

VI. CONCLUSION

The Postal Service has adequately considered the requirements of 39 U.S.C. § 404(d). Accordingly, the Postal Service's determination to close the Ferguson post office is affirmed.¹³

¹³ See footnote 3, *supra*.

It is ordered:

The Postal Service's determination to close the Ferguson, Iowa post office is affirmed.

By the Commission.

Shoshana M. Grove
Secretary

DISSENTING OPINION OF CHAIRMAN GOLDWAY

The Administrative Record is inaccurate with regard to economic savings. As such, the Postal Service has not adequately considered economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

The Postal Service argues that savings should be calculated based on a full-time postmaster's salary. Yet the Ferguson post office has been operated by a non-career officer-in-charge (OIC) since the former postmaster retired on October 1, 2010. On the one hand, the Postal Service argues that the effect on employees of this closing will be minimal because only an OIC will be eliminated; yet on the other hand, it argues that the savings should be calculated using a full-time postmaster position.

The Postal Service already claims billions of dollars in savings from reducing labor costs. I believe the savings from substituting OICs in postmaster positions throughout the nation have already been included in those billions. There are inherent and blatant contradictions in the Administrative Record that must be corrected on remand.

It is not the statutory responsibility of the Commission to correct the Administrative Record for the Postal Service and certainly not to make its own surmise about what and/or whether there would be savings if accurate data was in the Administrative Record. Therefore, the decision to close should be remanded to the Postal Service to correct the Administrative Record and present a more considered evaluation of potential savings.

The Administrative Record indicates that the Postal Service distributed 61 questionnaires seeking comment on the closure. However, there are 66 post office box customers, and this discrepancy in the extent of notice provided is not addressed.

In addition, the Administrative Record describes an increase in revenue between 2008 and 2010. This suggests that the Postal Service did not adequately consider the impact on the community, and contradicts the Postal Service's list of reasons to consider closing the post office which includes a statement that there is declining revenue. Therefore, the Postal Service did not adequately consider the impact of the closure on the community as required by 39 U.S.C. § 404(d)(2)(A)(i).

The Postal Service recently announced a moratorium on post office closings. It is confusing and perhaps unfair to require some citizens whose post offices have received a discontinuance notice as of December 12, 2011 to gather evidence and pursue an appeal to the Commission, while others whose post offices were in the review process, but had not yet received a discontinuance notice by December 12, 2011, have the respite of a 5-month moratorium and the opportunity to have further consideration of alternatives by the Postal Service.

The citizens of Ferguson, Iowa and their concerns regarding the loss of a neighborhood post office should be afforded the same opportunity to be heard and considered as the citizens of the approximately 3,700 post offices fully covered by the moratorium.

Ruth Y. Goldway

DISSENTING OPINION OF VICE CHAIRMAN LANGLEY

The Postal Service did not adequately consider the economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv). The Postal Service should take into consideration that a non-career employee postmaster relief (PMR) has been in charge of this facility since October 2010, not an EAS-11 postmaster, and reflect the PMR's salary and benefits in its cost savings analysis. As a government entity, the Postal Service should ensure that its cost/benefit analysis accurately identifies capturable cost savings and does not overstate savings.

I find that the Administrative Record evidence does not support the Postal Service's decision to discontinue operations at the Ferguson post office and should be remanded.

Nanci E. Langley